

# Program Assistance Letter

**DOCUMENT NUMBER: 2010-08**

**DATE: June 11, 2010**

**DOCUMENT TITLE:** Requirements for Medical Malpractice Coverage for Free Clinic Board Members, Officers, Employees and Individual Contractors under the Affordable Care Act Amendment to 42 U.S.C. 233(o)

**TO:** Free Clinics  
Free Clinic Associations  
Primary Care Associations  
Primary Care Offices  
National Cooperative Agreements

## I. PURPOSE

This Program Assistance Letter (PAL) supplements Program Information Notice (PIN) 2004-24 (<http://bphc.hrsa.gov/ftca/freeclinics/>) and provides guidance on adding medical malpractice coverage for free clinic board members, officers, employees and contractors under the Affordable Care Act (Public Law 111-148) (ACA), which amended the Public Health Service (PHS) Act 42 U.S.C. 233(o). 42 U.S.C 233(o), as amended, provides for the medical malpractice coverage of certain qualified free clinic individuals (covered individuals) under the Federal Tort Claims Act (FTCA). PIN 2004-24 explains how the Department of Health and Human Services' (HHS) Health Resources and Services Administration (HRSA), may deem a volunteer free clinic health care professional to be a PHS employee for the purposes of FTCA coverage for medical malpractice claims if the free clinic and volunteer health care professional meet certain statutory and program requirements. This PAL contains additional instructions for free clinics on how to apply to HRSA for medical malpractice coverage under the FTCA for volunteer free clinic health care professionals, board members, officers, employees, and/or contractors.

## II. INTRODUCTION

The amendment to the PHS Act, 92 USC 233(o) permits free clinics to apply for medical malpractice coverage, not only for licensed or certified volunteer health professionals, as was previously authorized, but also for free clinic board members, officers, employees and contractors. Implementation of section 233(o) is undertaken through the Free Clinics FTCA Program.

Currently, if a free clinic volunteer health professional meets all statutory and Free Clinics FTCA Program requirements, the related free clinic may sponsor the provider to become a “deemed” PHS employee for the purpose of FTCA medical malpractice coverage. Deemed PHS employee status provides a volunteer licensed or certified free clinic health care professional with immunity from medical malpractice lawsuits resulting from his/her performance of medical, surgical, dental or related functions within the scope of his/her employment on behalf of the free clinic. This deemed status requires that claimants, alleging acts of medical malpractice by the provider within the scope of deemed employment, file claims against the United States according to FTCA requirements.

Free clinics must submit an annual FTCA deeming application on behalf of their volunteer free clinic health care professionals to HRSA, which administers the Free Clinics FTCA Program. With the amendment of 42 U.S.C. 233(o) by the ACA, free clinic board members, officers, employees, and/or individual contractors, as well as volunteer health care professionals, whose deeming applications are approved by HRSA, will be provided with FTCA medical malpractice coverage. **However, the statutory expansion of free clinic coverage did not extend to free clinic entities, which therefore are not eligible for deemed employee status under 42 U.S.C. 233(o).**

### III. AGENCY CLARIFICATIONS

Medical malpractice coverage under the Free Clinics FTCA Program does not occur automatically. FTCA coverage requires HRSA approval of an application for deeming of certain individuals from a sponsoring free clinic. This PAL, along with PIN 2004-24, sets forth the form by which such deeming applications must be submitted.

FTCA coverage for free clinic volunteer health care professionals, board members, officers, employees, and individual contractors extends only to medical malpractice coverage, i.e., performance of medical, surgical, dental or related functions within the scope of the covered individual’s employment on behalf of the free clinic. It does not provide coverage beyond medical malpractice liability protection.

Only individual contractors who are licensed or certified health care practitioners are eligible for medical malpractice coverage under the Free Clinics FTCA Program. A contract between a free clinic and a corporation, including a contract with an eponymous professional corporation (defined as a professional corporation to which one has given one’s name, e.g., John Doe, LLC, and consisting of only one health provider) does not provide sufficient basis for deemed status under the Free Clinics FTCA Program.

### IV. HOW TO APPLY FOR FREE CLINICS FTCA PROGRAM DEEMING

All free clinics seeking deemed status for medical malpractice coverage for free clinic board members, officers, employees and/or individual contractors must submit applications for deeming as sponsors of those individuals.

**A. FOR FREE CLINICS WITH CURRENTLY DEEMED VOLUNTEER HEALTH PROVIDERS  
SUBMITTING A SUPPLEMENTAL DEEMING APPLICATION FOR CY 2010**

All free clinics with currently deemed volunteer health professionals that are seeking the new medical malpractice coverage for board members, officers, employees and/or individual contractors for the remainder of calendar year (CY) 2010, must complete and submit the supplemental application form included with this PAL.

**B. FOR FREE CLINICS SUBMITTING AN INITIAL DEEMING APPLICATION**

Free clinics submitting their initial deeming application including coverage for volunteer health professionals, board members, officers, employees, and/or individual contractors, must submit an application that includes the original application form from PIN 2004-24 (<http://bphc.hrsa.gov/ftca/freeclinics/>) for volunteer health professionals along with the supplemental application form included with this PAL.

**C. FOR FREE CLINICS SUBMITTING A RENEWAL DEEMING APPLICATION**

Free clinics seeking renewed coverage for volunteers and new or renewed coverage for board members, officers, employees and/or individual contractors for CY 2011 must submit a renewal application by completing and submitting the renewal application form when it becomes available in the fall.

In all cases, incomplete applications (including all amendments) will not be processed until all missing items are provided. This will impact date of coverage.

**V. GENERAL APPLICATION SUBMISSION INSTRUCTIONS**

To streamline FTCA deeming application submission and processing, free clinics should electronically submit a copy of their signed deeming application to [freeclinicsFTCA@hrsa.gov](mailto:freeclinicsFTCA@hrsa.gov). The email subject line should include the heading "Additional FTCA Coverage Application" and the free clinic's FTCA number (FC # XXXX). Alternatively, if the electronic submission process is not feasible, please submit a waiver of the electronic process request to [freeclinicsFTCA@hrsa.gov](mailto:freeclinicsFTCA@hrsa.gov). This waiver request to file the application by mail must be approved **prior** to the paper submission.

**VI. CONTACT INFORMATION**

For more information on the free clinic deeming application requirements and related questions, please contact: 1-866-FTCA-HELP (866-382-2435) – 9:00 AM to 8:00 PM (EST).

Sincerely,

James Macrae  
Associate Administrator for Primary Care

Attachment